IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.1227 of 2006

Pandurang Ganpati Deshmukh & ors. Petitioners

Vs.

Ramchandra Abaji Deshmukh Respondent

Mr.U.P.Warunjikar for petitioners.

Ms.L.S.Desai i/b Ms.Sharmila Deshmukh for respondent.

CORAM: B.H.MARLAPALLE,J.

August 08, 2006.

P.C.

. Heard the learned counsel for the respective parties. Rule. Respondent waives service. Petition is taken up for final hearing forthwith.

. The petitioners had moved an application at Exhibit 52 in Regular Civil Suit No.366 of 2002 filed by them, for amendment of the plaint under the provisions of Order VI, Rule 17 of CPC. The said application was partly allowed. The plaintiff, therefore, approached this Court in Writ Petition No. 4066 of 2004 and the petition was allowed on 17th

August 2005 by making the Rule absolute in terms of prayer clause (a). The said prayer clause reads as under:

> "(a) This Honourable Court will be pleased to call for records and proceedings of the Order passed by the Second Joint Civil Judge, Junior Division, at Satara dated 13/2/2004 below Exhibit 52 in Regular Civil Suit No. 366 of 2002 and after going through the legality, validity and propriety thereof, quash and set aside the same."

. Though this order was passed on 17/8/2005, the petitioners approached the trial Court by an application at Exhibit 66 filed on 16/1/2006 and prayed for condonation of delay in carrying out the amendments. By the impugned order dated 1/2/2006 the learned 2nd Jt.Civil Judge, Junior Division at Satara was pleased to reject the said application.

. The trial Court has noted that when the period to carry out the amendment was not stated in the order, in view of Order VI Rule 18 of CPC, the amendment was to be carried out within a period of 14

days and obviously the petitioners had approached the trial Court after about five months and the explanation furnished by them was not found to be satisfactory.

. In Writ Petition No.4066 of 2004 this Court had allowed the application at Exhibit 52 in its entirety and thus all the amendments sought to be made in the plaint were allowed. The petitioners were lethargic and there is also some room to believe that they were not properly advised to approach the Court within a specified period and take steps through their Advocate in the trial Court to bring the amendments on record. It appears that the writ issued by this Court did not also reach the lower Court and under such circumstances, it would be just and proper that the delay caused in approaching the trial Court is condoned and the plaintiffs are allowed to carry out the amendments permitted by this Court, but by levying costs.

. Hence this petition succeeds and the same is hereby allowed. The impugned order dated 1/2/2006 is hereby quashed and set aside and the application at Exhibit 66 stands allowed but on payment of costs

quantified at Rs.1000/- and to be remitted before the trial Court within a period of four weeks from today. The defendant is permitted to withdraw the said amount. Trial of the suit is hereby expedited.

(B.H.MARLAPALLE,J.)